MINUTES

JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

November 10, 2009
Room 643, Legislative Office Building

The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services (LOC) met on Tuesday, November 10, 2009 in Room 643 of the Legislative Office Building. Members present were Senator Martin Nesbitt, Co-Chair; Representative Verla Insko, Co-Chair; Senators Austin Allran, Bob Atwater, Doug Berger, Charlie Dannelly, James Forrester, Ellie Kinnaird, and William Purcell, and Representatives Jeff Barnhart, Beverly Earle, Bob England, Jean Farmer-Butterfield, and Fred Steen. Advisory members Representative Van Braxton and Representative William Brisson were also present. Also in attendance was Representative Hugh Blackwell.

Lisa Hollowell, Joyce Jones, Shawn Parker, Susan Barham, and Rennie Hobby provided staff support to the meeting. Staff Gann Watson and Ben Popkin listened to the meeting via real-time streaming audio through the NCGA intranet. The Visitor Registration Sheet is attached and is included as a part of the minutes. (See Attachment No. 1)

Representative Verla Insko, Co-Chair, called the meeting to order and welcomed members and guests. She asked for a motion to approve the minutes from the October 14, 2009 meeting. The motion was made and the minutes were approved.

Representative Insko asked Lisa Hollowell from Fiscal Research to provide background information on service funds reductions to the LMEs. Ms. Hollowell reminded members that the total reduction made by the General Assembly for the services managed through the LMEs was $60M for FY 2009-2010 and FY 2010-2011. She said that there was a $40M reduction for the non-disability specific general service fund; a $16M reduction of services supplementing the CAP-MR/DD waiver package; and a $4M reduction of services identified as “non-core” to the mission of the Division of MH/DD/SAS. There was an additional 5% reduction ($15M) of the services administered through the LMEs but that money was reinstated by the Governor. The remaining budget totals over $490M for the LME services and administration.

Michael Watson, Assistant Secretary for MH/DD/SAS Development provided the DHHS perspective on the LME funding reductions. Mr. Watson reviewed last year's LME budget reductions, including how funds were allocated to LMEs, how LMEs reduced their budgets, the effect of the reductions on fund balances, and the impact on services. (See Attachment No. 2) His presentation addressed the following items of interest:

- $8M of the $16M State funds supplementing CAP-MR/DD consumers was transferred to DMA but will come back into the system as a match for additional CAP slots.

- Assumption that LMEs will be making fund balance allocations to offset budget cuts from this year and next year.
- DHHS requested fund balance of $21.9M; received $24.9M - 114% went into system to offset budget cuts, 3 LMEs gave more than requested, 2 gave less. DHHS will review final audit of those 2 that gave less.
- Consequence to cuts is impact on providers serving a number of LMEs particularly Substance Abuse programs.
- Great concern over impact affecting jails and ER's; meetings with Sheriff's Association and the Hospital Association showed concern over waiting time and mental health and substance abuse patients in the ER's.
- Accumulative effect of cuts on system – decisions made on community level regarding State dollars will intersect changes in Medicaid rates and changes in the Medicaid service array.

Rhett Melton, Director of Pathways LME, discussed budget reductions at the community level. He addressed specific dollar amounts at Pathways, the strategies used in developing a reduction plan, and some of the current challenges. (See Attachment No. 3) Items of interest in his presentation included:

- Pathways experienced a net loss of $4.6M, which is equal to a 26% reduction of State funds for the LME.
- Responses to cuts include an internal group tracking IPRS earnings; benefits grid outlines array of services for eligible consumers by age and disability groups.
- Expressed concern over gaps that already exist and the impact of the elimination of additional services.
- There is currently a very strong provider network – protecting consumers and stepping up by exploring other opportunities to meet the needs of the consumer.
- No way to continue same level of care as in the past with 26% less funding; ramifications will continue to unfold.
- $3M was used to pay providers for services from fund balance, fund balance cannot be replenished and will create problems if cash flow from State continues.

Mr. Watson was asked to check into Mobile Crisis Services. Representative Brisson expressed concern that his district had no service after 5:00 in the afternoon but they were being funded for 24 hour service. Mr. Watson said he would be back in touch with him.

Members agreed that the $40M cut to the LMEs has been devastating and that the funding issue must be addressed when the General Assembly resumes in May.

Secretary Lanier Cansler, from the Department of Health and Human Services (DHHS), said that DHHS was examining Critical Access Behavioral Health Agencies to ensure flexibility exists for providers and that the services provided are based on clinical need while still controlling costs. He said DHHS was working with the Department of Commerce and the Employment Security Commission to try to minimize the impact of the reductions coming out of health care while maintaining access to services. Secretary Cansler was asked to provide the dollar amount on the impact from the H1N1 virus.

Regarding Community Supports, he said DHHS was trying to see that services provided in the bundled services would be available separately.

Leza Wainwright, Director of the Division of MH/DD/SAS, provided a review of funding for former Thomas S. class members. (See Attachment No. 4) She discussed outcomes from the Thomas S lawsuit and explained that the State continues to offer services to those who would have qualified for services as Thomas S. consumers. Points of interest included:

- Services received by former Thomas S. consumers are no different from the services that most individuals with intellectual or developmental disabilities and a co-occurring behavioral health issue receive.
- Thomas S. lawsuit entitled consumers to priority funding for services. Former members of Thomas S. continue to receive a broader array of State funded services than non-Thomas S. consumers on the CAP MR/DD waiver.
- Medicaid provides psychiatric services for a significant number of former Thomas S. class members.

Secretary Cansler was asked in light of the Fort Hood incident, how our State psychiatrists and other care providers are evaluated. He responded that he would try to get the information.

Continuing, Ms. Wainwright addressed the changes in State funding for CAP-MR/DD recipients previously receiving some State funded services in addition to CAP waiver services. (See Attachment No. 5) She reminded members that the General Assembly reduced the budget of the Division of MH/DD/SAS by $16M with $8M of that being turned into slots for the CAP-MR/DD waiver. $4M went to Tier 1 slots for the Supports Waiver and the rest went to a soft freeze on the Comprehensive Waiver. Items of interest mentioned included:

- 11,000 people served on PHB Innovations Waiver and the Comprehensive Waiver.
- $5.5M was funded for services that could have been covered through the waiver.
- Almost $53,000 was funded through the waiver that could have been funded through the Medicaid State Plan.
- $26M was for services that could partially be covered through the waiver and some portion of the cost could not.

Next, Tara Larson, Chief Clinical Operating Officer with the Division of Medical Assistance (DMA) reviewed a handout with the medical expenditures for the last FY 2009 as well as the year-to-date. (See Attachment No. 6) Ms. Larson was asked to provide the number of people receiving Community Support Team and Assertive Community Treatment Team services.

After lunch, Curtis Venable from Pisgah Legal Services explained that he worked with those receiving services, providers, and those paying for services which gave him a unique perspective on the system. His comments focused on specific problems with possible solutions. (See Attachment No. 7) Points of interest included:

- Services must be reduced in a way to allow communities and providers time to plan; currently there is a lack of clarity resulting in people losing jobs.
- No timetable depicting when the new array of services will be available; no firm information regarding how much people will be paid for delivering services and confusion over who is going to deliver what services.
- DHHS has not indicated exactly what set of services are meant to replace Community Support.
- Assuming that Community Support services will end January 1, 2010, providers are terminating professional staff now.

Representative Insko requested that DHHS respond to the presentation at a later date. Members of the committee voiced great concern over the pending January 1 date to end Community Support without an appropriate alternative in place. DHHS is scheduled to address the LOC next month to explain what the system would look like.

Secretary Cansler said that within two weeks there should be a plan that would outline how to proceed. He said that DHHS was waiting to hear from CMS but approval by CMS might take months. He indicated that the vast majority of services in Community Support would be available. Secretary Cansler said DHHS was trying to make decisions that do not damage the system but also accomplish the budget cuts that are required. He told members that if necessary the January 1 date would be extended again but that hopefully the transition pieces would be in place allowing providers the ability to plan.

Kathy Crocker, representing the State Consumer and Family Advisory Committee (SCFAC), reported on the response from their survey. (See Attachment No. 8) She explained that electronic surveys were sent to Local Consumer and Family Advisory Committees (LCFAC). SCFAC provided the recommendations to the Division of MHDDSAS and the Secretary. Points in her presentation included:

- Survey indicates service arrays offered in the community are not enough to meet the needs of the individual.
- People served need skill building supports; without Case Management people will lose services and quality of life.
- Who is held accountable when services are not working or families are not getting what is needed?

Next, Shawn Parker, from the Research Division briefed the committee on the charge of the Division of State Operated Healthcare Facilities. He said the oversight and management of the State institutions has been assigned to the new Division which works in partnership with the Division of MH/DD/SAS, LMEs, regional advocacy groups, and private providers.

The Committee requested that Mr. Luckey Welsh, Director, discuss the organizational structure of the new Division and specifically the State Psychiatric Hospitals. Mr. Welsh stated that over 12,000 employees care for individuals in our State facilities. Over 3,000 patients reside in the facilities. He said that one of the challenges facing him was to regain the trust of the citizens in the healthcare facilities. He reviewed information that

showed how the Division was accomplishing their goals. (See Attachment No. 9) Items in his presentation included:

- Last year occupancy at State hospitals was over 100% which puts too many patients in a facility without enough staff to care for them.
- Admissions to State facilities are decreasing as admissions to facilities in the community increase.
- Total budget reductions at facilities were over $24M this year.
- 100 patients will be transferred to Central Regional Hospital the first quarter of next year; staff positions have not been cut, they have been relocated.
- Admission delays have been fueled by the economy and an increase in population has increased the demand of psychiatric care.

Senator Purcell suggested and members agreed favorably that the LOC should tour some of the State facilities. The Co-Chairs asked for a proposal from DHHS with a suggested itinerary for the Committee.

Joyce Jones from the Bill Drafting Division provided a brief introduction to Mike Watson's presentation on *Local Inpatient Psychiatric Community Hospital Contracts.* She stated that, according to a recent article in the News & Observer, there are an increasing number of patients with mental illness showing up in emergency rooms and waiting days for an open bed in one of the State psychiatric hospitals or in a local community hospital capable of providing adequate psychiatric care. Last year's budget allocated $8.1M for the purchase of additional inpatient psychiatric beds or bed days in local community hospitals across the State, to increase local bed capacity and divert admissions from the State psychiatric hospitals. This year's budget increased the allocation to $20.1M annually. DHHS is charged with entering into three-way contracts with LMEs and community hospitals for the effective management of these additional beds or bed days. DHHS has entered into some of these three-way contracts, but the perception is that the contracts are coming on line slowly. Ms. Jones reviewed several items of interest that would be a part of Mr. Watson's presentation.

Mr. Watson commended the N.C. Hospital Association on the work that had been done in working with DHHS in encouraging the development of community inpatient psychiatric beds and in encouraging their members to become involved in the initiative. (See Attachment No. 10 to review Mr. Watson's comments.) Items of interest included:

- To expand community bed capacity, some inpatient psychiatric units are taking involuntary commitments.
- Contract with community hospitals states that if a patient becomes too difficult that person is placed on a priority list to be transferred to a State facility.
- Total of 191 new beds under this initiative; 77 beds started last year, 44 beds contracted in Wake County, 14 beds in Johnston County, and 19 beds at Smokey.
- With the available funding of $20M, the start of 114 new beds, the capacity is there to serve almost 5,000 new admissions in the community.
- Additional funding allows hospitals to be brought in that have underutilized capacity.

Tara Larson addressed follow-up questions on Case Management from the October LOC meeting. (See Attachment No. 11)

- Access to Case Management – transportation is not a billable service under Case Management.
- Case Managers must constantly update and evaluate the system and their clients.
- Communication, regardless of the number of agencies, is paramount; all must know what is going on with a client.
- The provider of Case Management for developmental disabilities cannot also be the provider of direct service.
- Once CMS approves an old State Plan Amendment (SPA), another SPA will be submitted to CMS for approval that changes the 15 minute billing unit to a case rate.
- Work group working on a definition of Case Management for SPA; also looking at knowledge, skills, and ability of Case Managers since quality of Case Management is not the same among the providers or across the stand alone Case Management Agencies.
- Report to be submitted to General Assembly on the rate and billing structure with Community Support.

There being no further business, the meeting adjourned at 3:40 PM.

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Senator Martin Nesbitt, Co-Chair Representative Verla Insko, Co-Chair

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Rennie Hobby, Committee Assistant